

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARK ALLEN RODRIGUEZ

Defendant.

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CRIMINAL ACTION NO. 4:09-CR-154

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Now before the Court is the request for revocation of Defendant's supervised release. After the District Judge referred the matter to this Court for a report and recommendation, the Court conducted a hearing on April 29, 2016, to determine whether Defendant violated his supervised release. Defendant was represented by Kenneth Weatherspoon. The Government was represented by Ernest Gonzalez.

On May 10, 2010, Defendant was sentenced by the Honorable United States District Judge Marcia A. Crone of the Eastern District of Texas to 262 months imprisonment followed by a 60 month term of supervised release for the offense of Conspiracy to Possess with Intent to Distribute Cocaine. On September 12, 2011, the sentence was reduced to 100 months imprisonment followed by a five (5) year term of supervised release. On June 11, 2014, the sentence was reduced to 75 months imprisonment followed by a five (5) year term of supervised release.

On January 21, 2015, Defendant completed his period of imprisonment and began service of his term of supervised release.

On March 23, 2016, the U.S. Probation Officer executed a Petition for Warrant or Summons for Offender Under Supervision [Dkt. 198 Sealed]. The Petition asserted that Defendant violated three categories of conditions of supervision as follows: (I) Violation of Mandatory Condition: The Defendant shall not commit another federal, state, or local crime. Violation of Mandatory Condition: The Defendant shall not unlawfully possess a controlled substance; and Violation of Standard Condition No. 7: The Defendant shall refrain from any excessive use of alcohol and shall not purchase, possess, use, distribute or administer any controlled substance or any paraphernalia related to any controlled substance, except as prescribed by a physician; (II) Violation of Standard Condition No. 2: The Defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month; and (III) Violation of Mandatory Condition: The Defendant shall not commit another federal, state, or local crime; Violation of Standard Condition 2: The Defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month; and Violation of Standard Condition No. 3: The Defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.

The Petition alleges that Defendant committed the following acts: (I) In Dallas, Texas, on or about January 2016, Mark Allen Rodriguez possessed and distributed heroin, as evidenced by his verbal admission to U.S. Probation Officer Louis Rodriguez (USPO Rodriguez), members of the Drug Enforcement Agency (DEA), and the Texas Department of Public Safety (DPS), a violation of Texas Health & Safety Code §48.115, a first degree felony. On January 17, 2016, Mr. Rodriguez was found to be in possession of approximately 270 grams of heroin. On February 17, 2016, Mr. Rodriguez admitted verbally to USPO Rodriguez, DEA, and DPS, that

he possessed heroin without consent of the Court; (II) Mr. Rodriguez failed to submit written monthly reports in December 2015 and January 2016; and (III) Mr. Rodriguez provided false statements to USPO Rodriguez, in violation of 18 U.S.C. §1001 – False Statements, a Class E felony. On February 4, 2016, Mr. Rodriguez submitted a monthly report form and failed to report he possessed heroin and had contact with law enforcement on January 17, 2016. Mr. Rodriguez provided false statements to USPO Rodriguez, in violation of 18 U.S.C. §1001 – False Statement, a Class E felony. On February 17, 2016, Mr. Rodriguez reported to USPO Rodriguez, that he was not aware that he could not negotiate the distribution of illegal drugs without the consent of the Court. Furthermore, he was untruthful when he reported the events that led to him possessing heroin.

Prior to the Government putting on its case, Defendant entered a plea of true to the Violation of Mandatory Condition: The Defendant shall not commit another federal, state, or local crime in the Petition. Specifically that Defendant, on or about January 2016, possessed and distributed heroin, as evidenced by his verbal admission to U.S. Probation Officer Louis Rodriguez (USPO Rodriguez), members of the Drug Enforcement Agency (DEA), and the Texas Department of Public Safety (DPS), a violation of Texas Health & Safety Code §48.115, a first degree felony. Further, on January 17, 2016, Mr. Rodriguez was found to be in possession of approximately 270 grams of heroin; and on February 17, 2016, Mr. Rodriguez admitted verbally to USPO Rodriguez, DEA, and DPS, that he possessed heroin without consent of the Court. The Government will abandon the remaining allegations and shall not pursue any further state or federal charges for these violations.

The Court finds that Defendant did violate his conditions of supervised release by committing the allegations listed herein. Defendant waived his right to allocate before the District Judge and his right to object to the report and recommendation of this Court.

RECOMMENDATION

Pursuant to the Sentencing Reform Act of 1984, the Court recommends that Defendant's supervised release be revoked and that he be committed to the custody of the Bureau of Prisons to be imprisoned for a term of thirty-six (36) months, with no term of supervised release to follow.

The Court also recommends that Defendant be housed in the Bureau of Prisons Seagoville facility, if appropriate.

SIGNED this 2nd day of May, 2016.

A handwritten signature in black ink, appearing to read 'C.A. Nowak', written over a horizontal line.

Christine A. Nowak
UNITED STATES MAGISTRATE JUDGE